



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[Document Number AMS-SC-16-0115]

**Peanut Promotion, Research, and Information Order; Change
in Assessment Rate Computation**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the assessment rate computation under the Agricultural Marketing Service's (AMS) regulations regarding a national research and promotion program (program) for U.S. peanuts. This rule changes the basis for assessment under the regulations from value to volume (per ton). Two rates of assessment are established instead of using the formula currently specified in the regulations. This rule also updates the definition for "fiscal year" specified in the regulations to reflect current practices.

DATES: *Effective Date:* [INSERT THIRTY DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

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SUPPLEMENTARY INFORMATION: This final rule affecting the Peanut Promotion, Research, and Information Order (order) at 7 CFR part 1216 is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January

30, 2017, titled `Reducing Regulation and Controlling Regulatory Costs'” (February 2, 2017).

Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this rule will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12988

In addition, this final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of

an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This rule changes the assessment rate computation under the Peanut Promotion, Research, and Information Order. Part 1216 is administered by the Board with oversight by USDA. This rule changes the basis for assessment under the program from value to volume (per ton). Two rates of assessment are established instead of using the formula currently specified in this part. The assessment rates will be \$3.55 per ton for Segregation 1 peanuts and \$1.25 per ton for lower quality Segregation 2 and 3 peanuts. This action was unanimously recommended by the National Peanut Board (Board) and will help facilitate

program operations by providing a more predictable revenue stream for the Board. This rule also updates the definition for fiscal year specified in the part to reflect current practices.

The Peanut Promotion, Research, and Information Order regulations took effect in 1999. Under the regulations, the Board administers a nationally-coordinated program of promotion, research, and information designed to strengthen the position of peanuts in the market place and to develop, maintain, and expand the demand for U.S. peanuts.

Section 1216.48(m) provides authority for the Board to recommend to the Secretary amendments to the regulations as the Board considers appropriate.

Section 1216.51 specifies that the funds necessary to pay for programs and other authorized costs shall be acquired by levying assessments upon producers in a manner prescribed by the Secretary. The assessments are collected by first handlers from producers and remitted to the Board no later than 60 days after the last day of the month in which the peanuts were marketed. Paragraph (c) of that section currently states that assessments shall be levied based on *value* at a rate of one percent of the price paid for all farmers stock peanuts sold. As defined in § 1216.9, "farmers stock peanuts" means picked or threshed

peanuts produced in the United States which have not been changed (except for removal of foreign material, loose shelled kernels and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels that are removed before farmers stock peanuts are marketed.

For producers who place their peanuts in a USDA loan program¹, assessments are levied at a rate of one percent of the loan value. The loan value is equivalent to the national loan rate for peanuts established by Congress and currently averages \$355 per ton.² The loan rate will vary depending upon the quality of the peanuts (e.g., Segregation 1, 2, and 3). For peanuts placed under loan, USDA deducts from the loan paid to the producer one percent of the loan value and remits this to the Board. This computes to an average assessment rate of \$3.55 per ton.

Over the three year period (2014-2016), about \$8.6 million in assessments has been collected under the program

¹ USDA's Farm Service Agency administers a marketing assistance program for peanuts on behalf of the Commodity Credit Corporation. Under this program, producers may apply for a loan which allows them to store their production and pledge the peanuts as collateral instead of selling them immediately after the fall harvest.

<https://www.fsa.usda.gov/programs-and-services/price-support/commodity-loans/non-recourse-loans/peanut-program/index>.

² https://www.fsa.usda.gov/news-room/news-releases/2017/nr_20170707_rel_0074.

annually. Assessments collections totaled \$7,284,050³ in 2014, \$8,811,444⁴ in 2015, and \$9,670,889⁵ in 2016.

In recent years, the Board has discussed the merits of modifying the formula for calculating assessments in order to receive a more predictable revenue stream for the program. A reduction in value (producer price or the loan rate) could reduce Board revenue to the point where the Board would have to drastically curtail its promotional and research activities. Producer prices declined 24 percent from 2013-2016 while production increased. According to USDA's National Agricultural Statistics Service (NASS), the producer price was \$0.249 per pound (or \$498 per ton) in 2013⁶ and \$0.189 (or \$378 per ton) in 2016.⁷ Production in 2013 was 4.174 billion pounds⁸ and 5.685 billion pounds in

³ National Peanut Board, Financial Statements with Independent Auditor's Report and Supplementary Information, October 31, 2014, Brooks, McGinnis & Company, LLC, p. 14.

⁴ National Peanut Board, Financial Statements with Independent Auditor's Report and Supplementary Information, October 31, 2015, Brooks, McGinnis & Company, LLC, p. 12.

⁵ National Peanut Board, Financial Statements with Independent Auditor's Report and Supplementary Information, October 31, 2016, Brooks, McGinnis & Company, LLC, p. 14.

⁶ USDA Crop Values Summary 2014, February 2015, p. 8; http://usda.mannlib.cornell.edu/usda/nass/CropValuSu//2010s/2015/CropValuSu-02-24-2015_correction.pdf.

⁷ USDA, Crop Values Summary 2016, February 2017, p. 7; http://usda.mannlib.cornell.edu/usda/nass/CropValuSu//2010s/2017/CropValuSu-02-24-2017_revision.pdf.

⁸ USDA, Crop Production Summary 2013, January 2014, p. 79; <http://usda.mannlib.cornell.edu/usda/nass/CropProdSu//2010s/2014/CropProdSu-01-10-2014.pdf>.

2016.⁹ For 2017, production is estimated at 7.429 billion pounds, up 31 percent from 2016.¹⁰

Board Recommendation

The Board met on April 4, 2017, and unanimously recommended changing the basis for assessment under the order from value to volume (per ton). Two rates of assessments will be established for farmers stock peanuts, depending upon their quality as defined in the Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States (Standards) codified in 7 CFR part 996.¹¹ Under the authority of section 517(d) of the 1996 Act, a board may recommend to the Secretary one or more rates of assessment under an order. The Board specifically recommended to set the assessment rates at \$3.55 per ton for Segregation 1 peanuts and \$1.25 per ton for lower quality Segregation 2 and 3 peanuts.

Pursuant to § 996.13(b) of the Standards, "Segregation 1 peanuts" means farmers stock peanuts with not more than 3.49 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and

⁹ USDA, Crop Production Summary 2016, February 2017, p. 101; <http://usda.mannlib.cornell.edu/usda/current/CropProdSu/CropProdSu-01-12-2017.pdf>.

¹⁰ USDA Crop Production, August 10, 2017, p. 31; <https://www.usda.gov/nass/PUBS/TODAYRPT/crop0817.pdf>.

¹¹ 7 CFR part 996 took effect in 2002 and requires U.S. and imported peanuts to meet certain quality standards (67 FR 57129; September 9, 2002).

which are free from visible *Aspergillus flavus*. Pursuant to § 996.13(c), "Segregation 2 peanuts" means farmers stock peanuts with more than 3.49 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*. Pursuant to § 996.13(d), "Segregation 3 peanuts" means farmers stock peanuts with visible *Aspergillus flavus*.

This action will help facilitate program operations by providing a more predictable revenue stream for the Board to carry out its mission. Section 1216.51 is revised accordingly.

This rule references §§ 996.13(b), 996.13(c) and 996.13(d) of the Standards which define the terms Segregation 1 peanuts, Segregation 2 peanuts, and Segregation 3 peanuts, respectively.

Further, this rule revises § 1216.11 regarding the term 'fiscal year' from the 12-month period beginning August 1 of any year and ending July 31 of the following year to the 12-month period beginning November 1 of any year and ending October 31 of the following year to reflect current industry practices. That section also defines the term crop year to mean the same as fiscal year. The term crop year is not referenced elsewhere in part 1216 and is

thus not necessary. This rule removes that term from § 1216.11. Section 1216.11 is revised accordingly.

Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the final rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (handlers) as those having annual receipts of no more than \$7.5 million.

According to the Board, there are approximately 7,600 producers and 33 handlers of peanuts who are required to pay assessments under the program.

Most producers would be classified as small businesses under the criteria established by the SBA. USDA's NASS reports that the farm value of the peanuts produced in the

top 11 States in 2016 was \$1.077 billion.¹² Dividing the 2016 crop value by 7,600 producers yields an average peanut sales per producer estimate of approximately \$142,000. This is well below the threshold level of \$750,000 in annual sales, indicating that most peanut producers would be classified by the SBA as small businesses.

Dividing the 2016 crop value by 33 handlers yields an average peanut crop value per handler of about \$33 million. This is many times larger than the \$7.5 million SBA threshold and is thus an indication that most of the handlers would not be classified as small businesses.

U.S. peanut production from the 11 major peanut-producing States in 2016 was 5.685 billion pounds.¹³ Georgia was the largest producer (49 percent of U.S. production), followed by Alabama (11 percent), Texas (10 percent), Florida (10 percent), South Carolina (6 percent), North Carolina (6 percent), Mississippi (3 percent), Arkansas (2 percent), Virginia (1 percent), Oklahoma (1 percent) and New Mexico (less than 1 percent). According

¹² USDA, Crop Values Summary 2016, February 2017, p. 9; http://usda.mannlib.cornell.edu/usda/nass/CropValuSu//2010s/2017/CropValuSu-02-24-2017_revision.pdf.

¹³ USDA Crop Production, August 10, 2017, p. 16; <https://www.usda.gov/nass/PUBS/TODAYRPT/crop0817.pdf>.

to the 2012 Census of Agriculture,¹⁴ small amounts of peanuts were also grown in seven other States.

If the number of peanut producers (7,600) is divided into total 2016 U.S. production (5.685 billion pounds), the resulting average peanut production per producer is approximately 748,000 pounds.

This rule revises § 1216.51 to change the basis for assessment from value to volume (per ton). The program is administered by the Board with oversight by USDA. Two rates of assessment will be established instead of using a formula currently specified in the regulations. The assessment rates will be \$3.55 per ton for Segregation 1 peanuts and \$1.25 per ton for lower quality Segregation 2 and 3 peanuts. This action was unanimously recommended by the Board and will help facilitate program operations by providing a more predictable revenue stream for the Board based only on volume for assessment. Authority for this action is provided in § 1216.48(m) and section 517 of the 1996 Act. This rule also updates the definition for fiscal year specified in § 1216.11 to reflect current practices. That section provides authority for the Board, with approval of the Secretary, to change the fiscal year.

¹⁴ USDA 2012 Census of Agriculture; p. 444;
https://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf.

Regarding the economic impact of this rule on affected entities, this action changes the basis of assessment from value to volume (per ton). The rates of assessment recommended by the Board are comparable to the rates that have been in effect since the inception of the program.¹⁵ While assessments impose additional costs on producers, the costs are minimal and uniform on all. The costs would also be offset by the benefits derived from the operation of the program. (The update to § 1216.11 regarding the fiscal year is administrative in nature.)

Regarding the impact of the peanut program on the industry, the program has been successful in helping to build demand and improve producer returns. A 2014 economic study shows that the program helped to increase demand by 15 percent from 2007-2013, and that each dollar invested in Board activities over the period returned \$8.87 to the producer.¹⁶

With regard to alternatives, the Board has been considering revising the assessment rate computation for a number of years. The Board considered revising the assessment rate to equal a weighted average of the value of

¹⁵ This action would not increase the assessment rate. Therefore, a referendum is not required (see § 1216.51(j)).

¹⁶ Kaiser, Harry, An Economic Analysis of the National Peanut Board, August 11, 2014, p. 1. The analysis is available from USDA or the Board.

Segregation 1, 2, and 3 peanuts as reported by the NASS for the prior year. However, this would still link the assessment rate to value. Another option would be to maintain the status quo. After review and deliberation, the Board unanimously recommended revising the basis for assessment under the program from value to volume as described herein.

To calculate the percentage of producer revenue represented by the assessment rate, the proposed assessment rates are divided by the average producer price. The proposed assessment rates are \$3.55 per ton (\$0.001775 per pound) for Segregation 1 peanuts and \$1.25 per ton (\$0.000625 per pound) for Segregation 2 and 3 peanuts. According to NASS, the average producer price ranged from \$0.193 per pound in 2015 to \$0.189 per pound in 2016.¹⁷ Thus, the proposed assessment rates as a percentage of producer price could range from 0.92 to 0.94 percent for Segregation 1 peanuts and from 0.32 to 0.33 percent for Segregation 2 and 3 peanuts.

Reporting and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and

¹⁷ USDA, Crop Values Summary 2016, February 2017, p. 27; http://usda.mannlib.cornell.edu/usda/nass/CropValuSu//2010s/2017/CropValuSu-02-24-2017_revision.pdf.

recordkeeping requirements that are imposed by the program have been approved previously under OMB control number 0581-0093. This final rule will not result in a change to the information collection and recordkeeping requirements previously approved and will impose no additional reporting and recordkeeping burden on peanut producers or first handlers.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In regard to outreach efforts, Board members have been conducting outreach to educate industry members about the need for changing the basis of assessment since January 2016. The issue has been discussed at Board meetings over the past few years. The Board has also conducted outreach to the major peanut associations and has received positive

feedback. All of the Board's meetings are open to the public and interested persons are invited to participate and express their views.

A proposed rule concerning this action was published in the Federal Register on March 30, 2018 (83 FR 13700). The Board sent the proposed rule directly to the peanut producer associations, Board members, and assessment payers. In addition, the Board disseminated the proposed rule via the internet by providing the links to the proposal in its industry newsletter and website. The proposal was also made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending April 30, 2018, was provided to allow interested persons to submit comments.

Analysis of Comments

Thirteen comments were received in response to the proposed rule. Of those 13 comments, 12 comments were in favor of the proposed flat computation of the two assessment rates (one favorable comment was a duplicate and only counted once), and one comment was outside the scope of the review.

Ten commenters stated the change in the assessment computation would allow for a more consistent revenue stream for the Board to carry out its mission. Of these

commenters, one commenter stated the computation change is not an increase or decrease in producer assessments. It stated that this change is a proactive business move to create an assessment rate which will not fluctuate downward rapidly. The proposed computation will allow the Board to plan long term without a disruption to its income flow. Another commenter in favor of the proposed change stated that it will be less confusing and easier for USDA to administer the assessment rate.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, is consistent with and will effectuate the purposes of the 1996 Act.

List of Subjects in 7 CFR Part 1216

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Peanut promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1216 is amended as follows:

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

1. The authority citation for part 1216 continues to read as follows:

Authority: 7 U.S.C. 7411-7425; 7 U.S.C. 7401.

2. Revise § 1216.11 to read as follows:

§ 1216.11 Fiscal year.

Fiscal year means the 12-month period beginning with November 1 of any year and ending with October 31 of the following year, or such other period as determined by the Board and approved by the Secretary.

3. In § 1216.51, revise paragraphs (c) and (d), remove paragraph (e), and redesignate paragraphs (f) through (j) as paragraphs (e) through (i) to read as follows:

§ 1216.51 Assessments.

* * * * *

(c) Such assessments shall be levied on all farmers stock peanuts sold at a rate of \$3.55 per ton for Segregation 1 peanuts and \$1.25 per ton for Segregation 2 peanuts and 3 peanuts, as those terms are defined in §§ 996.13(b)-(d) of this title.

(d) For peanuts placed under a marketing assistance loan with the Department's Commodity Credit Corporation, the Commodity Credit Corporation, or any entity determined by the Commodity Credit Corporation shall deduct and remit to the Board, from the proceeds of the loan paid to the producer, the assessment per ton as specified in paragraph (c) of this section, no more than 60 days after the last

day of the month in which the peanuts were placed under a
marketing assistance loan.

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Dated: June 8, 2018

Bruce Summers
Administrator

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